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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 384

[Docket No. FMCSA-2011-0039]

RIN 2126-AB33

Commercial Driver's License Information System State Procedures Manual, Release 5.2.0

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate by reference the most recent edition of the American Association of Motor Vehicle Administrators, Inc.'s (AAMVA) Commercial Driver's License Information System (CDLIS) State Procedures Manual (the Manual) (Release 5.2.0). This final rule requires all State driver licensing agencies (SDLAs) to use this recent edition of the Manual to develop the process required to transmit, receive, record, and update information on a CDLIS driver record. This information includes, but is not limited to, the commercial driver's license (CDL) holder's physical description, commercial and noncommercial driving status, medical certification status, convictions, disqualifications and accidents. This final rule is intended to ensure the uniform application of CDLIS procedures among all States.

DATES: *Effective Date:* This final rule takes effect on **[Insert date 30 days after date of publication in FEDERAL REGISTER]**. *Compliance Date:* Compliance is required by January 30, 2012. The incorporation by reference of the publication listed in the rule is

approved by the Director of the Office of the **Federal Register** as of **[Insert date 30 days after date of publication in FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

Electronic Access

The electronic file of this document is available from the following: the Federal Register at <http://www.gpoaccess.gov/fr/index.html>; the Federal eRulemaking Portal at <http://www.regulations.gov> and searching the Agency name and docket number (FMCSA-2011-0039).

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I. Legal Basis

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99-570, title XII, 100 Stat. 3207-170, codified at 49 U.S.C. chapter 313) required the Secretary of

Transportation, after consultation with the States, to prescribe regulations on minimum uniform standards for State issuance of CDLs. The Act also granted FMCSA authority to prescribe procedures and requirements the States must observe in issuing CDLs and CDL learner permits and specified information States must include on each CDL (49 U.S.C. 31308).

FMCSA is required by statute to maintain an information system that serves as the clearinghouse and depository of information about the licensing, identification and disqualification of operators of CMVs (49 U.S.C. 31309). CDLIS is the information system that serves that function. To avoid loss of Federal-aid highway funds, 49 U.S.C. 31314 requires each State to comply substantially with 49 U.S.C. 31311(a), which prescribes the requirements for State participation in the CDL program. To ensure that the States are able to exchange information about CDL holders efficiently and effectively through CDLIS, as required by 49 U.S.C. 31311(a)(5)-(9), (15), (18)-(19), and (21), this rule requires States issuing CDLs and CDL learner permits to follow all the procedures described in Version 5.2.0 of the CDLIS State Procedures Manual when posting, transmitting, and receiving all information on a CDL driver's CDLIS driver record.

II. Background

In 1988, the Federal Highway Administration (FHWA) entered into a designation agreement with AAMVA's affiliate AAMVAnet, Inc. to create and operate CDLIS. Under that agreement, CDLIS had to contain all the information required in 49 U.S.C. 31309(b). The 1988 agreement stated that AAMVAnet will "cooperate fully with FHWA with respect to the operation of CDLIS including, but not limited to, information content and the development of standards relating to access to CDLIS by States and various

employers and employees.’’ Pursuant to section 106(b) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748, 1757, 49 U.S.C. 113 note), the 1988 agreement automatically transferred to FMCSA upon the Agency’s establishment and remained in effect until FMCSA and AAMVA, the party that inherited the responsibilities of its affiliate AAMVAnet, Inc., entered into a superseding agreement in 2008. Copies of the 1988 and 2008 agreements are in the public docket for this rulemaking.

In August 2005, section 4123 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) authorized FMCSA to establish a modernization plan for CDLIS (Pub. L. 109-59, 119 Stat. 1144, 1734, partly codified at 49 U.S.C. 31309(e) et seq.). Section 4123 also authorized grants to States or organizations representing States for the modernization of CDLIS (49 U.S.C. 31309(f)).

On May 2, 2006, FMCSA published the CDLIS Modernization Plan in the Federal Register (71 FR 25885). The Plan detailed the statutory requirements for modernization, the phases of the modernization plan, and the availability of grant funding for AAMVA and the States to comply with CDLIS modernization requirements. Since May 2006, AAMVA has received grants from FMCSA to complete the tasks enumerated in the Modernization Plan.

On June 9, 2008, FMCSA and AAMVA entered into a new cooperative agreement regarding the operation, maintenance, and modernization of CDLIS. While FMCSA authorizes AAMVA to maintain and operate CDLIS, FMCSA does not own CDLIS and it is not a Federal system of records. FMCSA and AAMVA work closely together to monitor State compliance with the CDLIS specifications, as set forth in the

May 2, 2006 Federal Register notice, and the States' annual grant agreements. FMCSA has awarded AAMVA Federal financial assistance grants to maintain an active Help Desk for State personnel, to conduct regularly occurring CDLIS training courses for State personnel, and to provide States with regular CDLIS transaction and error reports to improve their compliance efforts.

The goals of the 2008 agreement, to which any amendments must be made in writing and signed by all parties, are to provide a framework for the ongoing operation, maintenance, administration, enhancement, and modernization of CDLIS by AAMVA. The modernization will ensure compliance with applicable Federal information technology security standards; electronic exchange of all information including the posting of convictions; self-auditing features to ensure that data are being posted correctly and consistently by the States; and integration of an individual's CDL and the medical certificate as required in the final rule on "Medical Certification Requirements as Part of CDL" (73 FR 73096, December 1, 2008). Finally, the agreement provides a schedule for modernization of the system. The updated Release 5.2.0 of the Manual implements the CDLIS modernization effort.

III. Purpose and Scope of the CDLIS State Procedures Manual

The Manual (Release 5.2.0, February 2011) outlines the standard administrative practices required of the fifty States and the District of Columbia when participating in CDLIS. The 13 Canadian provinces and territories and the Mexican General Directorship of Federal Motor Carrier Transportation (DGAF) will also adopt the Release 5.2.0. This updated Release 5.2.0 supersedes the Manual (Release 4.1.0) of September 2007.

The primary audience for this Manual is State personnel involved in CDL programs, and their counterparts in Canada and Mexico, including administrative employees involved in driver licensing and computer-technology staff supporting the CDLIS transactions. The Manual (Release 5.2.0) contains background information about the laws mandating CDLIS and discusses types of CDLIS users. This Manual also includes descriptions, excerpted from the CDLIS System Specifications (Release 5.2.0), of the nation-wide computerized data-exchange transactions used to electronically record and report driver information. Further, the Manual (Release 5.2.0) provides guidance on administrative driver licensing procedures that involve CDLIS, including issuing, renewing, transferring, withdrawing, and reinstating a driver's license, and posting convictions. The Manual (Release 5.2.0) does not address CDL or CDL learner's permit program requirements outside the scope of CDLIS.

The Manual (Release 5.2.0) addresses changes that were made as part of the modernization effort to make CDLIS more efficient in handling the increasing number of driver records and data transactions. These changes include new rules for processing transactions, procedures for handling data transaction errors and clarifications of existing rules and procedures for processing data transactions. The following is a summary of the changes:

Comply with applicable Federal information technology security standards:

- The network was upgraded to comply with National Institute of Standards and Technology (NIST) and other Federal standards, including the encryption of messages (note: all States have completed this upgrade).

- FMCSA has encouraged States to follow the NIST standards in their internal systems that maintain driver history information used in messages sent via CDLIS.

- Because the CDLIS Central Site stores a significant accumulation of personally identifiable information (PII), FMCSA has overseen a Certification and Accreditation by independent auditors to ensure that it provides sufficient safeguards and mitigates the risk of that data being compromised or accessed by unauthorized personnel.

Provide for the electronic exchange of all information, including posting of convictions:

- Medical Certificate information, driver self-certification of operating status, medical certification status, information regarding variances and exemptions from medical requirements have all been added to the driver history record exchanged via CDLIS.

- A new nationwide driver license restriction code of ‘V’ was created to be used on the license document and CDLIS messages to ensure law enforcement would ask the driver to provide variance information during a traffic stop.

- A new CDLIS message will allow FMCSA to quickly locate a driver’s State and license number after a crash.

Contain self-auditing features to ensure that data is being posted correctly and consistently by the States:

- Message edit-checks were added to ensure that data in driver history is being posted correctly and consistently by the States.

- Reports have been created to assist FMCSA in monitoring State compliance with Federal regulations related to timeliness, data quality, and various capabilities.
- States will be required to provide data from their licensing systems to verify that it matches the information on the Central Site; States will be provided error reports to take action to correct any data conflicts.
- Non-PII data will be used to create statistical reports related to the national CDL program.

The Manual also addresses the rules and procedures for recording and transmitting the new medical certification data that is being added to CDLIS driver records.

IV. Incorporation by Reference

Section 552(a)(1) of Title 5, U.S.C. , authorizes agencies, with the approval of the Director of the Federal Register, to incorporate by reference into regulations materials already published elsewhere. This reduces the volume of material published in the Federal Register and the Code of Federal Regulations. This final rule is part of the process of incorporating the Manual (Release 5.2.0) by reference. The legal effect of incorporation by reference is that the material is treated as if it were published in the Federal Register. This material, like any other properly issued rule, would then have the force and effect of law.

When the regulatory requirements for State participation in the CDL program were adopted as 49 CFR Part 384 (59 FR 26029, May 18, 1994), they included the provision that the States must adhere to program requirements specified by the Agency

and the designated operator of CDLIS. Section 384.231(d) states that each “State shall maintain such driver records and cause such driver identification data to be retained on the CDLIS as the operator of the CDLIS specifies are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219.” In fact, the information collection requirements built into CDLIS were specified broadly by FHWA in 1988 and more precisely by FMCSA in 2008. Those requirements have formed the basis for several editions of the Manual. In 2002, FMCSA, therefore, incorporated by reference into § 384.231(d) Version 2.0 of the Manual (67 FR 49742, July 31, 2002) and later updated the rule to incorporate the Manual (Version 4.1.0) (73 FR 73096, December 1, 2008).

FMCSA believes that uniform practices among the States can only be ensured by incorporating by reference the latest Manual (Release 5.2.0), published in February 2011. This most recent version of the Manual (Release 5.2.0) is available for inspection at the Department of Transportation Library and the National Archives and Records Administration. Copies of the Manual may also be obtained through AAMVA. Further details, contact addresses, and telephone numbers are provided in 49 CFR 384.107. While AAMVA plans to update this version of the Manual as needed to reflect changing legal requirements and best practices in the operation of CDLIS, incorporating the Manual (Release 5.2.0) by reference, however, ensures that each State complies with the specific version required by FMCSA.

V. Discussion of Comments and Responses

FMCSA published a notice of proposed rulemaking (NPRM) on April 6, 2011, and provided for a 60-day public comment period (76 FR 19023). During the comment period, FMCSA received one comment from an anonymous source.

Comment:

The commenter agreed overall with the proposed rule. However, there was concern that the NPRM did not explain with specificity the types of convictions, disqualifications and accidents that will be listed on a driver's CDLIS record. The commenter further stated that convictions, disqualifications, and accidents that occurred outside the scope of a driver's use of his or her CDL should not be posted on a driver's CDLIS record. The commenter stated that the following should not be included in a driver's CDLIS record: 1) convictions outside the scope of the use of the CDL, for example, battery; and 2) information about accidents in vehicles that do not require the driver to hold a CDL.

The commenter also stated that certain information not related to a driver's use of a CDL should be included in his or her CDLIS record, such as all events resulting from chemical abuse and child molestation.

The commenter stated that implementing these changes would benefit FMCSA by reducing the risk of a challenge to the rule on privacy or equal protection grounds, would assist law enforcement in determining whether a CDL holder will be a safe driver and would act as a deterrent to CDL holders.

FMCSA response:

The purpose of this final rule is to incorporate by reference the Manual (Release 5.2.0), which will be more efficient in handling the increasing number of driver records

and data transactions. The Manual (Release 5.2.0) includes new rules for processing transactions, procedures for handling data transaction errors and clarifications of existing rules and procedures for processing data transactions.

This final rule does not make any changes to the types of convictions, disqualifications, and accidents that are required to be reported to CDLIS. As a result, the comment on what types of convictions, disqualifications or accidents should or should not be included in CDLIS are outside the scope of this rulemaking.

VI. Summary of Final Rule

This final rule amends the regulations at § 384.107 (b) to incorporate by reference the Manual (Release 5.2.0), and at § 384.301 to add paragraph (g) specifying that the State must comply with requirements of this rule by January 30, 2012. In the NPRM, FMCSA proposed adding the incorporation by reference to paragraph (e) of § 384.301; the Agency has now codified this provision in paragraph (g) as a result of other changes to the regulations that were codified after the NPRM was published.

This final rule requires States to comply with the Manual (Release 5.2.0) by January 30, 2012. The Agency believes the standard 3-year phase-in period is unnecessary because, under the modernization plan, the States are currently working to pass required implementing legislation, modify their information systems to comply with the new modernized CDLIS, begin recording the medical examiner's certificate information onto the CDLIS driver record, and make that information available from the CDLIS driver record beginning on January 30, 2012.

VII. REGULATORY ANALYSES

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563 (76 FR 3821, Jan. 21, 2011), and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Agency does not believe implementing this rule will create new costs or cause an adverse economic impact on the industry or the public. Therefore, a full regulatory evaluation is unnecessary.

This final rule is directed to SDLAs. It will merely incorporate the CDLIS State Procedures Manual (Release 5.2.0). Separate regulations require States to comply with the substantive requirements of the Manual (Release 5.2.0), which merely sets processes and procedures to ensure that these other regulations are uniformly implemented. As a result, this rule will not impose significant costs on the States.

The only new statutory requirements that are addressed in the Manual are related to the merging of the medical examiner's certificate into the CDLIS driver record and those listed in the May 2, 2006 Federal Register notice detailing the plan to modernize CDLIS. The costs associated with the implementation of the new medical examiner's certificate requirements were addressed in the final rule on "Medical Certification Requirements as Part of the CDL," published on December 1, 2008 (72 FR 73096). The costs associated with the modernization of CDLIS were addressed in the "CDLIS Modernization Plan," published on May 2, 2006 (71 FR 25885).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires Federal agencies to determine whether rules could have a significant economic impact on a substantial number of small entities. This rule will primarily affect States and their processes and procedures for maintaining electronic driver history records. Consequently, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 et seq.), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$141.3 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rule will not create an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not affect a taking of private property or otherwise have taking implications.

Executive Order 13132 (Federalism)

FMCSA analyzed this final rule in accordance with the principles and criteria of Executive Order 13132, “Federalism,” and has determined that it does not have federalism implications.

The Federalism Executive Order applies to “policies that have federalism implications,” which is defined as regulations and other actions that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Sec. 1(a). Further, Section 3(b) of the Federalism Order provides that “[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.”

The final rule amends the CDL program authorized by CMVSA. States have been issuing CDLs in accordance with Federal standards for over two decades. The CDL program does not have preemptive effect because it is voluntary. States may withdraw at any time, although doing so would result in the loss of certain Federal-aid highway funds pursuant to 49 U.S.C. 31314. Because this rule makes only small, though numerous, incremental changes to the requirements already imposed on participating States,

FMCSA has determined that it does not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule requires States to adopt uniform processes and procedures to maintain electronic driver history records in CDLIS, but does not require the collection of PII.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. The CDLIS records, however, are not transferred from FMCSA to the States; they are created and maintained by the States. FMCSA has determined this rule will not result in a new or revised Privacy Act System of Records for FMCSA.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the Office of Management and Budget

(OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that this final rule does not affect a currently-approved information collection covered by the OMB Control No. 2126-0011 titled, “Commercial Driver Licensing and Test Standards” or create the need for any new information collection.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.). The Agency has determined under its environmental procedures Order 5610.1, published March 1, 2004 in the Federal Register (69 FR 9680), that this action is categorically excluded (CE) from further environmental documentation under Appendix 2, Paragraph 6(s) and (t) of the Order (69 FR 9703). That CE relates to regulations regarding the CDL and related activities to assure CDL information is exchanged between States. In addition, the Agency believes this rule includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA’s general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency has determined that it is not a “significant energy action” under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 384

Administrative practice and procedure, Highway safety, Incorporation by reference, and Motor carriers.

For the reasons set forth in the preamble, FMCSA amends part 384 of title 49, Code of Federal Regulations (49 CFR part 384) as follows:

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER’S LICENSE PROGRAM

1. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 et seq., and 31502; secs. 103 and 215 of Pub. L. 106-159, 113 Stat. 1753, 1767; and 49 CFR 1.73.

2. Revise § 384.107(b) to read as follows:

§ 384.107 Matter incorporated by reference.

* * * * *

(b) Materials incorporated. The AAMVA “Commercial Driver’s License Information System (CDLIS) State Procedures Manual,” Release 5.2.0, February 2011, incorporation by reference approved for §§ 384.225 and 384.231.

* * * * *

3. Revise § 384.301 to add a new paragraph (g) to read as follows:

384.301 Substantial compliance – general requirements.

* * * * *

(g) A State must come into substantial compliance with the requirements of subpart B of this part, which is effective as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], as soon as practicable, but not later than January 30, 2012.

Issued on: October 14, 2011

Anne S. Ferro
Administrator

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